



Atty Dkt No. GDG01.US1  
USSN 09/777,418  
PATENT

AP/1761  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

GRANT D. GREEN

Serial No.: 09/777,418

Group Art Unit: 1761

Filing Date: 6 February 2001

Examiner: Steven L. Weinstein

Title: METHOD FOR PACKAGING BAKING INGREDIENTS

APPELLANT'S BRIEF

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This Brief is filed in support of Applicant's Notice of Appeal, filed in the USPTO on September 21, 2004. A petition for a 4-month extension of time is attached, in addition to a form PTO-2038 authorizing the charges to Applicant's credit card.

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I. REAL PARTY IN INTEREST

Applicant is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-3, 8-10, 19, and 21-24 are pending and rejected.

Claims 4-7, 11-18, and 20 are canceled.

IV. STATUS OF AMENDMENTS

No amendments were submitted following the final rejection.

V. SUMMARY OF THE INVENTION

The claimed invention relates to improved packaging for brown sugar.

In conventional, prior art packaging of brown sugar, a bulk weight is provided (e.g., 1 lb, 5 lbs, 500 g, 1 kg, etc.) in a single container for use by the end user or consumer. When cooking with brown sugar, the American consumer typically measures a quantity by *volume*: typical consumer recipes used in the United States specify quantities by volumetric measures, rather than by weight. However, brown sugar is sold in the US in a moist, aggregative form. To accurately measure a quantity of brown sugar, one packs the brown sugar firmly into a measuring device (e.g., a ½ cup measure), as this is the conventional method of assuring a consistent measure (see, e.g., Woman's Day,<sup>1</sup> "Good Housekeeping Illustrated Cookbook" (1980 Hearst Books) p. 9,<sup>2</sup> and Better Homes and Gardens Complete Guide to Food and Cooking (1991, Meredith Corp.),<sup>3</sup> cited by the Examiner). However, because brown sugar is aggregative,

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<sup>1</sup> "When measuring, pack brown sugar firmly into container; it should retain the shape of the container when it is removed." (Woman's Day at p. 1784, middle column.)

<sup>2</sup> "Brown sugar: Pack the sugar lightly into the cup with the back of a spoon, then level off; it will hold its shape when inverted from the cup." Cited but not applied.

<sup>3</sup> "Sugar: Granulated or powdered sugar should be spooned into a dry measuring cup and leveled off. Brown sugar, on the other hand, is pressed firmly into a dry measure so it holds the shape of the cup when it is turned out (see Photo 3)." Cited but not applied.

this transforms the brown sugar into a relatively solid lump, which must typically then be dispersed and mixed into other dry ingredients.

The claimed invention provides a more convenient package for brown sugar, comprising individual pre-measured portions of brown sugar in an un-packed state, each pre-measured portion (volume) corresponding to a commonly-used recipe quantity of packed brown sugar. (Specification at p. 3, lines 18-20; p. 4, lines 6-16.) For example, a package of the invention may comprise a box containing a plurality of individual plastic bags, each containing an amount of “unpacked” brown sugar corresponding to 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, and 1/4 cup of “packed” brown sugar. (Specification at p. 2, lines 25-34.) Thus, the consumer may then use brown sugar without packing the brown sugar into a measuring container, or in fact measuring the brown sugar further at all.

The packaging method of the invention has a further advantage in that the brown sugar remaining unused in the package will remain sealed in its pre-measured portions, without exposure to air. This helps to keep the brown sugar from drying out and forming hard lumps. (Specification at p. 3, lines 32-34.)

Note that “brown sugar” is defined in the specification (p. 2, lines 33-34) to exclude sugar that has been granulated or otherwise treated to avoid caking.

## VI. ISSUES

Are all pending claims obvious under 35 USC §103(a) over the cited art?<sup>4</sup>

## VII. GROUPING OF CLAIMS

Claim 1, 8, 19, 22, and 23 are all argued together (“Group I”), and separately from the claims of Groups II-IV.

Claim 2 (“Group II”) is argued separately from all other Groups, because it limits the pre-measured quantity of firmly-packed brown sugar to at least 1/8 cup. This limitation distinguishes

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<sup>4</sup> The art cited in this rejection is: Institutional Distribution (1991) 27(6):158; Star Tribune (11/22/89, p. 4T); Woman’s Day Encyclopedia of Cookery (1966) 11:1784; “Family Circle Illustrated Library of Cooking” (1972) pp. 479-80; Advertising Age (8/21/78) p. 65; Saulsbury, US 4,335,609; Slagg, US 4,810,239; Pichardo, US2,745,751; Forbes (6/2/97) p. 196; and Baltimore Morning Sun (8/4/97) p. 53.

the claimed invention from the cited references that disclose “table service” packets containing quantities of sugar of approximately 2 tsp (1/48 cup).

Claims 3, 10, and 21 (“Group III”) are argued together, and are argued separately from the other Groups, because they limit the quantities to those equivalent to the group consisting of 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup. This limitation distinguishes the claimed invention from the cited references that disclose “table service” packets containing quantities of sugar of approximately 2 tsp (1/48 cup), and further distinguishes the claimed invention from references that disclose 1 lb and 2 lb quantities of brown sugar.

Claim 24 is argued with Group I. Claim 24 was subject to a separate rejection in the Office Action of 5/22/03 (see p. 5)<sup>5</sup>; however, this rejection was not repeated or referred to in the Final Action dated March 22, 2004. Regardless of whether this rejection is still maintained or not, Applicant argues that Claim 24 is patentable for the same reasons that the claims of Group I are patentable.

## VIII. ARGUMENT

### A. *Obviousness under §103(a)*

Obviousness under §103(a) is determined using the four-part test set forth in *Graham v. John Deere*:

“In determining obviousness, we employ the four-part test set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966). This test requires us to examine (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the objective evidence of nonobviousness. *Id.* at 17-18; *see also* 35 U.S.C. §103 (2000).” (*Iron Grip Barbell Co. v. USA Sports Inc.* (CAFC 2004) 73 USPQ2d 1225.)

The Examiner has rejected all pending claims as obvious under §103(a) over Institutional Distribution (1991) 27(6):158 and Star Tribune (11/22/89, p. 4T), in view of Woman’s Day Encyclopedia of Cookery (1966) 11:1784, “Family Circle Illustrated Library of Cooking” (1972) pp. 479-80, Advertising Age (8/21/78) p. 65, Saulsbury (US 4,335,609), and Slagg (US

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<sup>5</sup> Claim 24 was rejected as obvious under §103(a) over the references applied in the rejection of all other claims, further in view of Modern Packaging; Tremaine, GB24,151; Salfisberg, AU 113,301; Knoop et al., US 2,791,324; and Cozzie, US 5,664,670. Each reference disclosed various forms of packaging having multiple containers. None disclosed any packaging of brown sugar.

4,810,239), further in view of Pichardo (US2,745,751), Forbes (6/2/97) p. 196, and Baltimore Morning Sun (8/4/97) p. 53.

### **1. Scope and Content of the Prior Art**

Institutional Distribution (1991) 27(6):158 is cited by the Examiner for its teaching that turbinado sugar is sold in single-service two-teaspoon packets for table use (Office Action 5/22/03 at pp. 2-3). Institutional Distribution also disclosed that turbinado sugar is “a crystalline sugar with an off-white to tan color and a distinctive flavor.” Institutional Distribution further disclosed that brown sugar is refined sugar to which a “molasses-type syrup has been added to provide flavor and color.”

Star Tribune (11/22/89, p. 4T) is cited by the Examiner for its teaching of brown sugar sold in ½ cup (3.5 oz) foil packets under the name “Soft ‘n Sweet” (Office Action 5/22/03 at p. 3). The reference did not disclose whether the brown sugar was packed into the foil, or filled loosely, but stated that the manufacturer “has devised a method of adding molasses to brown sugar to keep it soft. In fact, it’s guaranteed for one year not to harden in the package.”

Woman’s Day Encyclopedia of Cookery (1966) 11:1784 is cited by the Examiner as disclosing “further evidence of packaging brownulated sugar” and that information is available for substituting brownulated sugar for brown sugar (Office Action 5/22/03 at p. 3). Woman’s Day disclosed that “brownulated sugar” pours freely.

“Family Circle Illustrated Library of Cooking” (1972) pp. 479-80 is cited by the Examiner as “providing further evidence that it was known in the art to provide a weight/volume relationship for firmly packed, brown sugar...” (Office Action 5/22/03 at p. 3). Family Circle in fact disclosed that “One pound light or dark brown sugar, firmly packed, measures 2¼ to 2½ cups”, and that brown sugar is sold in 1-pound cartons and 2-pound transparent bags. Family Circle further disclosed that brownulated sugar pours easily, does not need to be packed for measuring, and is sold in 1 lb-4 oz cartons.

Advertising Age (8/21/78) p. 65 is cited by the Examiner as disclosing that “the relationship between brownulated and brown sugar was also known.” (Office Action 5/22/03 at p. 4.) The text of the reference states, in its entirety:

“Amstar Corp. has reformulated the brownulated granulated brown sugar. The new formula allows for a 1-to-1 substitution with brown sugar, compared with the earlier 1½-to-1 replacement ratio.”

Saulsbury (US 4,335,609) and Slagg (US 4,810,239) were cited by the Examiner as “further evidence that it was known that brown sugar created problems in recipes due to its property of variably clumping.” (Office Action 5/22/03 at p. 4.) Saulsbury disclosed an improved measuring cup, having an upper disk for compacting and leveling ingredients such as brown sugar. Slagg disclosed a scale for weighing ingredients, and capable of displaying the volumetric equivalent.

Forbes (6/2/97) p. 196 is cited by the Examiner as further evidence of brown sugar in packets (Office Action 5/22/03 at p. 4). The reference actually states: “Patricia Row, who runs a value equity portfolio at \$1.6 billion (assets) Kennedy Capital Management, thinks Savannah’s new packaging and retail items flavored sugars for iced tea and brown sugar in packets will help the company expand its 20% share of the sugar market.” The reference failed to state what quantity of sugar is enclosed in the packets.

Pichardo (US 2,745,751) is cited by the Examiner “as further evidence of providing products such as sugar, albeit, not brown sugar, in containers wherein the sugar has been predetermined to assume certain measurements; specifically volume measurements (e.g., 1 and ½ teaspoons).” (Office Action 5/22/03 at p. 4.)

Baltimore Morning Sun (8/4/97) p. 53 is cited by the Examiner “to disclose[] that even brownulated sugar clumps”. The reference (an obituary) stated that Mr. Moore “is credited with helping pioneer the development of ‘brownulated’ sugar, which doesn’t clump as much as does normal brown sugar.” (Office Action 5/22/03 at p. 4.)

## **2. The Level of Ordinary Skill in the Art**

Applicant is a layperson with regard to the field of consumer product packaging.

## **3. The Differences Between the Claimed Invention and the Prior Art**

The claimed invention is admittedly very simple. However, simplicity is not synonymous with obviousness under §103(a). As stated by the Court of Appeal for the Federal Circuit in *In re Kotzab* (CA FC 2000) 55 USPQ2d 1313:

“A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. *See Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. **Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one “to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher.”** *Id.* (quoting *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983)).

Most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. *See id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See id.* Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. *See In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Even when obviousness is based on a prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. *See B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp.*, 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996).” (*In re Kotzab* (CA FC 2000) 55 USPQ2d 1313 at 1316-17, emphasis added.)

The claimed invention differs from the cited art as set forth below:

Institutional Distribution disclosed the packaging of turbinado sugar in single-service two-teaspoon (2 tsp) packets for table use. However, “brown sugar” as defined in the Specification excludes any sugar that has been granulated or treated to avoid caking: turbinado sugar apparently pours freely. Thus, Applicant submits that the turbinado sugar disclosed in Institutional Distribution is not “brown sugar” within the meaning of claims 1 and 19, as defined in the Specification at p. 2, lines 31-34. Claims 2, 3, 10, and 21 further limit the invention to quantities of brown sugar equivalent to at least 1/8 cup of packed brown sugar, which is larger than the 2 tsp packets disclosed in Institutional Distribution.<sup>6</sup> Claim 9 differs from Institutional Distribution in that claim 9 requires a plurality of different sized portions, whereas Institutional Distribution disclosed only 2 tsp packets. Claim 24 further differs from Institutional Distribution in that Institutional Distribution does not disclose a plurality of bags joined end to end, as Applicant has attempted to illustrate in Fig. 2 of the application.

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<sup>6</sup> 1/8 cup is equal to 2 Tbl, which is equal to 6 tsp (1 Tbl = 3 tsp).

Claims 1 and 19, and their dependent claims, do not read on Star Tribune because the reference does not disclose if the cited sugar is sold in foil packets that contain  $\frac{1}{2}$  cup of packed brown sugar, or  $\frac{1}{2}$  cup of unpacked brown sugar, or the equivalent of  $\frac{1}{2}$  cup of packed brown sugar. If the reference sugar is packaged to contain  $\frac{1}{2}$  cup of unpacked brown sugar, rather than the *equivalent* of  $\frac{1}{2}$  cup of *packed* brown sugar, it does not fall within the claims. As the reference does not state that the foil packets contain the equivalent of  $\frac{1}{2}$  cup (or any other amount) of packed sugar, it fails to fall within the claims. Although the reference sugar is allegedly packaged in such a way that it remains soft, the consumer is still required to measure out a quantity of sugar and thus does not obtain the benefit of the claimed invention. Claim 9 is further distinguished from Star Tribune in that claim 9 requires a plurality of different sized portions, whereas Star Tribune disclosed only at most  $\frac{1}{2}$  cup portions. Claim 24 further differs from Star Tribune in that Star Tribune does not disclose a plurality of bags joined end to end.

Woman's Day Encyclopedia of Cookery was cited for its teaching of "brownulated sugar", which pours freely and is thus outside the scope of "brown sugar" as claimed herein. Thus, Woman's Day fails to disclose a pre-measured portion of brown sugar as defined in the Specification, and claims 1 and 19, and their dependent claims fail to read on the reference.

"Family Circle Illustrated Library of Cooking" disclosed sugar sold by weight, regardless of the volume of sugar (packed or not) that corresponds. The statement in the reference that "One pound light or dark brown sugar, firmly packed, measures  $2\frac{1}{4}$  to  $2\frac{1}{3}$  cups" shows the lack of packaging by volume. Thus, claims 1 and 19, and the claims dependent therefrom, do not read on Family Circle because it does not disclose the packaging of brown sugar in a volume equivalent to a pre-measured packed volume. Claims 3, 10 and 21 further differ from Family Circle in that they specify that the pre-measured quantity be selected from the group consisting of 1 cup,  $\frac{3}{4}$  cup,  $\frac{2}{3}$  cup,  $\frac{1}{2}$  cup,  $\frac{1}{3}$  cup,  $\frac{1}{4}$  cup, and  $\frac{1}{8}$  cup, none of which are disclosed in Family Circle as brown sugar package sizes. Claim 9 further differs from Family Circle in that it requires a plurality of different sized portions, which is not disclosed in the reference. Claim 24 further differs from Family Circle in that it requires a plurality of bags joined end to end, which is not disclosed in the reference.



All pending claims fail to read on Advertising Age, because it disclosed only the change in a substitution ratio, from 1.5-to-1 to 1-to-1, between “brownulated” sugar and brown sugar. Because “brownulated” sugar is apparently free-flowing, it is outside the scope of the invention.

Saulsbury (US 4,335,609) and Slagg (US 4,810,239) disclose, respectively, a measuring cup improvement and a gravimetric kitchen scale capable of calculating the equivalent volume of selected ingredients. Neither disclosed an article of manufacture comprising a quantity of loose brown sugar equivalent to a quantity of packed brown sugar. Thus, all of the pending claims fail to read on Saulsbury and Slagg.

Forbes disclosed little more than the idea that brown sugar may be placed in packets. As Forbes failed to disclose anything regarding the quantity of sugar within the packet, or whether it was packed or loose, Forbes fails to teach anything relevant to the pending claims.

Pichardo (US 2,745,751) disclosed beverage kits containing (apparently white) sugar and powdered creamer, and powdered coffee, wherein two compartments of different sizes were provided so that one could add ½ tsp, 1 tsp, or 1½ tsp of sugar. However, Pichardo failed to disclose the packaging of brown sugar. Brown sugar and white sugar are clearly not equivalent in terms of their ease of packaging and use, as evidenced by Saulsbury, Slagg, and the development of “brownulated” sugar. Although Pichardo disclosed a step toward convenience, it addressed the convenience of the coffee drinker, rather than the cook in the kitchen who is wrestling with brown sugar. The problems and solutions are distinct, as white sugar does not need to be packed for measuring. Thus, Pichardo failed to suggest or teach the claimed invention.

Baltimore Morning Sun was cited as teaching that “even brownulated sugar clumps”. This, however, is contradicted by the Examiner’s other cited references (Woman’s Day and Family Circle), which disclose that brownulated sugar “pours freely.” However, regardless of whether brownulated sugar may clump or not, one apparently does not have to pack it in order to measure it (see Family Circle). Baltimore Morning Sun failed to disclose anything regarding the packaging of brown sugar.

In summary, the only sugar packaging disclosed in the cited art apart from Star Tribune consists of (a) individual “table service” packets (about 2 tsp), (b) 1 lb bags or cartons, and (c) 2 lb bags. Star Tribune disclosed foil packets of brown sugar containing ½ cup, but did not disclose whether this quantity was an amount of loose brown sugar corresponding to ½ cup of

packed brown sugar, or whether it was simply  $\frac{1}{2}$  cup of loose brown sugar. In any event, it failed to suggest or teach packaging brown sugar loosely, but in a quantity that corresponds to a convenient amount of packed brown sugar.

The primary advantage of the claimed invention is that it avoids the annoyance of packing brown sugar in order to measure it, followed by “unpacking” it to disperse it into dry ingredients. This annoyance simply does not exist in the case of freely-flowing ingredients such as conventional white sugar or (apparently) brownulated sugar. Regular granulated sugar can be simply poured into a measuring cup, and dumped into a bowl to be easily mixed with any other ingredient: thus, there is no (or at most a very minor) advantage to pre-measuring granulated sugar. Packed brown sugar, in contrast, clings together in lumps and resists even dispersion. Thus, the cited art that discloses packaging of granulated (including “brownulated” sugar) fails to suggest either the problem or the solution achieved by the claimed invention.

The Examiner’s rejection appears to be summed up in the statement: “It is also pointed out that any loosely packaged brown sugar would be equivalent to *some* measured quantity of firmly packed brown sugar.” (Office Action 5/22/03 at p. 3, beginning of lower paragraph, emphasis added.) This, however, misses the point of the invention. The claims claim a “pre-measured portion” of brown sugar equivalent to an amount of packed brown sugar commonly used in consumer recipes (Specification at p. 3, lines 19-20). This is synonymous with a useful volume: see, e.g., “common measure” and “recipe measure” as defined in the Specification at p. 2, lines 20-24. Further, a “pre-measured portion” is clearly not a random or irregular quantity, as such would be the antithesis of a *measured* portion. Further, the Examiner’s position clearly does not apply to claims 3, 10, and 21, which specify particular volumes of packed brown sugar. Applicant further points out that 1 lb and 2 lb containers disclosed in the art are not convenient measures for consumers (as 1 lb of brown sugar corresponds to between  $2\frac{1}{4}$  and  $2\frac{1}{3}$  cups, according to Family Circle), nor would it be practical or convenient to tear open 192 packets, each containing 2 tsp of brown sugar, in order to measure out  $\frac{1}{2}$  cup.

Star Tribune is the only cited reference that disclosed brown sugar packaged in something other than a 1 lb (or greater) bag, or 2 tsp packets. However, Star Tribune failed to disclose the state of the brown sugar contained in the package, i.e., whether it was packed or loose. Nothing in Star Tribune taught or suggested providing multiple packets in a variety of

sizes, nor did it clearly disclose packing a quantity of loose brown sugar equivalent to a useful measured amount of packed brown sugar.

Applicant submits that the cited references fail to disclose or suggest the claimed invention. None of the references, alone or in combination, suggest that brown sugar can or should be packaged loosely in individual portions that correspond to useful amounts of packed brown sugar. Further, none of the cited references disclose or suggest providing brown sugar in a plurality of individual portions, or particularly in a plurality of useful portions of different sizes. Here, as in *In re Kotzab*, one must be careful not to find the claimed invention obvious merely because it is so simple.

Further, the claimed invention exhibits a surprising result in view of the cited art: although the art apparently recognizes the inconvenience of handling brown sugar (as evidenced by the development of “brownulated” sugar), nothing in the art suggests that the manufacturer can pre-measure conventional brown sugar and provide it in pre-measured portions.

#### 4. Objective Evidence of Nonobviousness

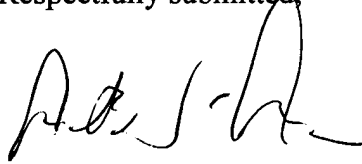
The development of “brownulated” sugar at least as early as 1966 (cited in Woman’s Day above) and its reformulation in 1978 (Advertising Age, cited above) demonstrates the long held unmet need to find a solution for dealing with the problems in handling brown sugar. That solution, however, does not appear to have been widely adopted judging from the range or products available on supermarket shelves. Brownulated sugar, because it is not as hygroscopic as conventional brown sugar, imparts a different texture to baked goods. See, e.g., the “Domino Sugar FAQ” (<http://www.dominosugar.com/info/faq.asp>, downloaded on March 18, 2005), a copy of which is attached hereto. See also “The Secrets of Baking Revealed by Sarah Phillips” ([http://www.clabbergirl.com/learn\\_sarah\\_ingredients\\_barcookies.php](http://www.clabbergirl.com/learn_sarah_ingredients_barcookies.php), downloaded on March 18, 2005), a copy of which is attached hereto, which states:

“Cookies made with brown sugar tend to be more soft and chewy. It’s because brown sugar contains molasses which is hygroscopic and absorbs water from the atmosphere. In fact, upon standing, cookies made from brown sugar stay chewy as the Butterscotch Bar Cookie Recipe does. ***Don’t use brownulated sugar instead of brown sugar***; it is granulated sugar coated with molasses and will produce differences in texture.” (Emphasis added.)

It thus appears that the moist, hygroscopic properties of conventional brown sugar are the cause of both its advantages and its disadvantages. Its baking advantages over brownulated sugar (and white sugar) are that it results in soft and chewy cookies (as well as lighter and moister cakes and other desserts), in addition to its agreeable molasses taste. However, that very hygroscopicity also causes the physical characteristics that make brown sugar awkward to deal with. The measurement problem remains, and is fully overcome only by the claimed invention.

Applicant respectfully submits that the Examiner's rejection(s) are in error, and that the claimed invention is patentable over the cited prior art. Applicant respectfully requests reversal of the rejections, and allowance of the pending claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Grant D. Green', written over a horizontal line.

Grant D. Green  
Reg. No. 31,259

Date: March 18, 2005

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IX. APPENDIX – CLAIM LISTING

1. (Previously presented) An article of manufacture, comprising: a pre-measured portion of brown sugar, enclosed in a suitable container, wherein said brown sugar comprises loosely-packed brown sugar, and said pre-measured portion is an amount equivalent to a pre-measured quantity of firmly-packed brown sugar.

2. (Previously presented) The article of claim 1, wherein said pre-measured quantity of firmly-packed brown sugar is larger than 1/8 cup.

3. (Previously presented) The article of claim 1, wherein said pre-measured quantity of firmly-packed brown sugar is selected from the group consisting of 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup.

4-7. (Cancelled)

8. (Original) The article of claim 1, wherein said article comprises a plurality of pre-measured portions, each enclosed in an individual container.

9. (Original) The article of claim 8, wherein said plurality of pre-measured portions comprises a plurality of different sized portions.

10. (Previously presented) The article of claim 9, wherein at least one pre-measured quantity of firmly-packed brown sugar size is selected from the group consisting of 1 cup, 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup.

11-18. (Cancelled)

19. (Previously presented) An article of manufacture, comprising a plurality of bags, each bag comprising a pre-measured portion of brown sugar, wherein said brown sugar comprises loosely-packed brown sugar, and said pre-measured portion is an amount equivalent to a pre-measured quantity of firmly-packed brown sugar.

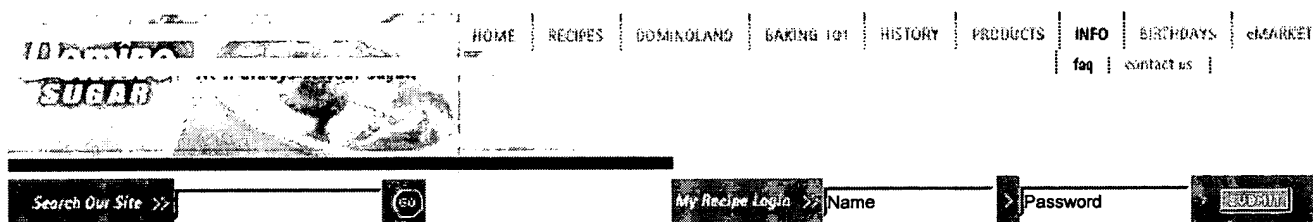
20. (Cancelled)

21. (Previously presented) The article of claim 19, wherein said pre-measured quantity of firmly-packed brown sugar is selected from the group consisting of 3/4 cup, 2/3 cup, 1/2 cup, 1/3 cup, 1/4 cup, and 1/8 cup.

22. (Original) The article of claim 19, wherein said plurality of bags comprises at least four bags.

23. (Original) The article of claim 19, wherein each bag contains an identical pre-measured portion.

24. (Original) The article of claim 19, wherein said plurality of bags are joined end to end in a chain.

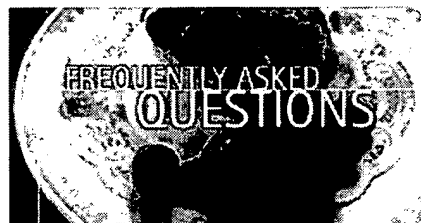


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### What is Domino® Brownulated® Light Brown Sugar?

Domino® Brownulated® Light Brown Sugar is a granulated, free-flowing sugar with a medium molasses flavor. Brownulated® Sugar is pourable and doesn't lump, cake or harden. Brownulated® Sugar is made from brown sugar and cane caramel color and can be used in equivalent cup measurements as regular brown sugar, but due to moisture content will produce differences in texture as compared to recipes made with regular brown sugar.

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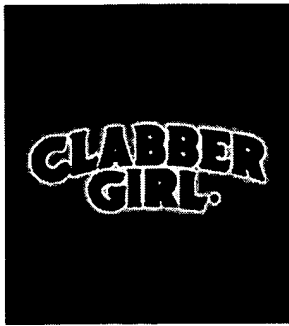
## frequently asked questions

- Q.** What is Domino® Brownulated® Light Brown Sugar?
- A.** Domino® Brownulated® Light Brown Sugar is a granulated, free-flowing sugar with a medium molasses flavor. Brownulated® Sugar is pourable and doesn't lump, cake or harden. Brownulated® Sugar is made from brown sugar and cane caramel color and can be used in equivalent cup measurements as regular brown sugar, but due to moisture content will produce differences in texture as compared to recipes made with regular brown sugar.
- Q.** Do you still make Domino® Liquid Brown Sugar?
- A.** No. Unfortunately, this product is no longer available.
- Q.** What is Domino® Superfine Sugar?
- A.** Domino® Superfine Sugar is finely pulverized granulated sugar that dissolves completely in cold drinks and is recommended for delicate desserts such as meringues, mousses and soufflés, or for sprinkling on fruit and cereal.
- Q.** What is the difference between Domino® 4X and 10X Confectioners Sugar?
- A.** The "X" designations are derived from the mesh sizes of the screens used to separate powdered sugar into various sizes. Thus, 4X would have a larger particle size, whereas 10X would have a smaller particle size.
- Q.** Can confectioners sugar be substituted for granulated in recipes?
- A.** It is not recommended to substitute confectioners sugar for granulated sugar. Since confectioners sugar has a much finer texture and it contains a small percentage of cornstarch to prevent caking, substituting can give you unexpected results.
- Q.** Do you still make Domino® Flavored Confectioners Sugar in Chocolate, Lemon and Strawberry?
- A.** No. Unfortunately these products are no longer in production.
- Q.** What is the difference between Domino® Dots® Sugar Cubes and Domino® Hostess Crystal Tablets?
- A.** Hostess Tablets are a full serving size, while Dots® are a half-teaspoon size.
- Q.** Why is there a slit on the wrappers of your tablets found in restaurants?
- A.** The slits are a by-product of the process used to wrap each individual tablet. Much like wrapping a gift, a device is used to keep the sugar cube in place. Upon release, a slight slit remains in the paper.
- Q.** Can you tell me more about Domino® Sugar products?
- A.** Domino® Granulated Sugar is highly refined white sugar. The 5lb. bag of Domino® Pure Granulated Sugar remains the brand's flagship product. Over the years, the Domino® Granulated Sugar product line has expanded to include a variety of forms and packages such as: Domino® Dots® Sugar Cubes, Hostess Crystal Tablets, Packets, and Superfine, which is a more finely granulated sugar that dissolves almost instantly in beverages and cooking.

Domino® Confectioners Sugar, or powdered sugar, is granulated white sugar that has been crushed into a fine powder and is ideal for icings or as a sprinkle-on dessert topping. Two different grain sizes are available, Domino® 4X and 10X Confectioners Sugars.

Domino® Brown Sugar is white sugar combined with molasses, which gives it an amber color, soft texture and distinctive flavor. Domino® Golden Light Brown and Old Fashioned Dark Brown are the two most common styles of brown sugar, which mainly vary in strength of flavor. Domino® Brownulated® Light Brown Sugar, another innovative product, is a brown sugar that pours freely out of the carton and never lumps, cakes or hardens.





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### Did You Know?...The Secrets of Baking Revealed

#### CHEWY BUTTERSCOTCH WALNUT BAR COOKIE INGREDIENTS:

A discussion of Chewy Butterscotch Walnut Bar Cookie Recipe includes few, simple ingredients, easily found in one's kitchen pantry: all-purpose flour, dark brown sugar, butter, eggs, and vanilla extract. Baking powder and sometimes baking soda are used to leaven. Salt is mentioned sporadically in most bar cookie recipes, but if not included, I add in ½ teaspoon per recipe (with the flour); a small amount magnifies the flavors in the recipe. My Butterscotch Bar Recipe has added walnuts, but ¾ cup sweetened coconut can be added, as well as 2 tablespoons grated orange peel for more flavor.

Chewier type bars have a high level of sugar and butter and less flour, making their batters more fluid, hence the need to contain them in a baking pan. If not, their batters would spread and drip all over the oven during baking versus most cookie dough which is stiff and can be baked on a flat cookie sheet.

**Sarah Says:** As in all other areas of baking, using fresh, high-quality ingredients is critical to success.

**Wheat Flour:** The type of flour determines the structure of the cookie, and is the main binding agent. Each type of flour has an individual protein profile suitable almost exclusively for specific uses. All-purpose flour is generally used in most bar cookie recipes, but other wheat flour types are found, as well. It's best not to substitute all-purpose flour with any other type.

**Sweeteners:** Some form of sugar is used in all cookie recipes. It is a tenderizing agent, adds sweetness and affects the spread of the cookie. Granulated sugar or brown sugar is used frequently in cookie making, but honey, molasses, corn syrup and other sugars can be used, sometimes in combinations. It can be confusing as to which type to use; when a recipe calls simply for "sugar," it is safe to assume that granulated table sugar is intended. Powdered or confectioners' sugar is referred to as 10X or the fineness of the grind.

Cookies made with brown sugar tend to be more soft and chewy. It's because brown sugar contains molasses which

is hygroscopic and absorbs water from the atmosphere. In fact, upon standing, cookies made from brown sugar stay chewy as the Butterscotch Bar Cookie Recipe does. Don't use brownulated sugar instead of brown sugar; it is granulated sugar coated with molasses and will produce differences in texture.

**Fats:** Stick butter, margarine, lard and shortening, all have their place in the cookie world. They coat the flour's gluten strands, some better than others and prevent the cookie from becoming tough when moistened and stirred. I like to use unsalted butter because I find it adds the best flavor to a cookie recipe, but every baker has his or her own preference. Salt will mask unwanted flavors because it is a natural preservative.

**Eggs:** Use only fresh, large eggs in baking recipes. If the recipe is simply written with the word "eggs", use large which have a volume of about  $\frac{1}{4}$  cup each. Check the expiration date printed on the side of the carton and discard if the date has passed. Store eggs in the coolest part of the refrigerator which is the back of the middle shelf. Eggs can also serve as leaveners, the yolks emulsify the dough, and also contribute to the structure or shape of a cookie.

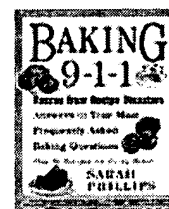
**Leaveners:** The basic leavening gases commonly found in baking recipes are air from whipped eggs, beating, stirring, creaming and kneading (called mechanical); water vapor or steam from liquids; carbon dioxide from chemical leaveners, baking soda and baking powder; and carbon dioxide from fermenting yeast, both packaged and from a starter (sourdough or sponge). In baking recipes, one or more leavening agents participate in the leavening process.

Baking soda and baking powder are the classic chemical leaveners in the Butterscotch Bar Cookie Recipe. Used together and separately, these components affect the puffiness to some degree, but also affect color and flavor. Most bar cookie use baking powder, but I like to substitute some of it with baking soda to magnify the butterscotch color and bring out its deep, rich flavor in the recipe.

**Sarah Says:** Make sure your leaveners are fresh, otherwise your recipe won't rise.

**Baking Powder Test:** Once opened, baking powder begins to lose its strength after about only 6 months. Store in a cool, dry place and only use dry utensils when measuring from the can; once moistened, baking powder has been activated and is no longer good. To test whether your baking powder is still active, stir a teaspoonful into  $\frac{1}{2}$  cup of tepid (warm) water. It should "fizz". If it doesn't, discard.

**Baking Soda Test:** Pour a couple tablespoons of white vinegar into a small cup, add 1 teaspoon of baking soda,



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and stand back. If it froths like mad, it's good. Baking soda lasts for a long time if stored in a cool, dry place and only dry utensils are used when measuring from the container. Once moistened, baking soda has been activated and is no longer good.

**Flavorings:** Extracts, nuts, orange peel and other flavorings, all contribute to the character and taste of a cookie. I recommend using only pure vanilla extract, never imitation—it keeps forever in a dark and cool storage cabinet. The taste of imitation vanilla is immediately detected, and is exaggerated if the dough or cookies are frozen. Use flavors discriminatingly but courageously.

Nuts can mean walnuts, pecans, and almonds, plus others. They can become rancid quickly (in just a week or two, depending on conditions) at room temperature, and should be stored in the refrigerator or freezer. When a recipe calls for 1 cup chopped nuts, measure after chopping.

Grated orange rind (known as “zest”) refers to the outer colored portion of the rind.

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